

BRIEF IN SUPPORT OF MOTION

Defendant is entitled to file a motion pursuant to 28 USC 2255, (2255) challenging the legality of his detention. The rules for a motion/petition under 255 are complex but that's not the issue for this motion. The pertinent part of the statute imposes a short limitation period, as set forth below:

- (f)A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of
- (1) the date on which the judgment of conviction becomes final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (Emphases added)

It is utterly impossible to prepare a competent motion without the possession and ability to use the docket, docket items, transcripts, discovery and disclosures, and other papers available to the lawyer for the defense. Defendant has declared as much, under oath. The best lawyer on planet earth would not make such an attempt.

The "United States" is Plaintiff in this case. The "Department of Justice" (DOJ) is an executive department of the United States. Defendant is in the custody of the Department of Justice-Federal Bureau of Prisons (DOJ-FBOP). Said another way, Defendant is in the physical custody of a subsidiary of his adversary.

"US Attorney General" is a cabinet level position. They are nominated by the US President and approved by the advice and consent of the US Senate. US Attorneys for the various districts report to the Attorney General.

The DOJ-FBOP is a subsidiary of the DOJ, and is routinely represented by DOJ lawyers. DOJ lawyers have a common domain. See for example alexander.geocaris@usdoj.gov. They have a lot of names all at one domain. The chain of command for all of them leads to a common supervisor.

US Attorneys commonly post signs in their offices claiming the high road, the path of integrity. They say that they strike hard blows but never foul. They claim to wear the white hat.

The DOJ website (<https://www.justice.gov/about>) makes these claims:

Our Mission -- The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights.

Our Values -- Independence and Impartiality. We work each day to earn the public's trust by following the facts and the law wherever they may lead, without prejudice or improper influence.

Honesty and Integrity -- Our employees adhere to the highest standards of ethical behavior, mindful that, as public servants, we must work to earn the trust of, and inspire confidence in, the public we serve.

Respect -- Our employees value differences in people and in ideas and treat everyone with fairness, dignity, and compassion. (Emphases added)

They flagrantly violated their own laws. See 18 U.S. Code § 1701, which provides:

Whoever knowingly and willfully obstructs or retards the passage of the mail, or any carrier or conveyance carrying the mail, shall be fined under this title or imprisoned not more than six months, or both.

See also 18 U.S. Code § 1702, which provides:

Whoever takes any letter, postal card, or package out of any post office or any authorized depository for mail matter, or from any letter or mail carrier, or which has been in any post office or authorized depository, or in the custody of any letter or mail carrier, before it has been delivered to the person to whom it was directed, with design to obstruct the correspondence, or to pry into the business or secrets of another, or opens, secretes, embezzles, or destroys the same, shall be fined under this title or imprisoned not more than five years, or both.

(Emphasis added)

Their own rules say that legal mail must be delivered. Nothing herein should be construed to imply that federal prisons cannot inspect mail for contraband. That's not the point and not the issue. The point is that the DOJ-FBOP violated its own rules to cheat Defendant out of access to his legal papers, that he purchased at great expense to himself, for the purpose of vindicating his liberty, due process, and 1st Amendment peaceful petition interests.

The mighty US DOJ, in representing its incarceration arm, loves to claim that the victims of their lawlessness, fraud, and chicanery didn't "exhaust administrative remedies." The truth of the matter is that the "administrative remedies" relevant to

this motion have been exhausted repeatedly. The DOJ-FBOP has already stated in its own formal published policy papers that legal papers must be delivered. Defendant is entitled to the benefit of these administrative actions, and also to the written conclusions and policies of the DOJ-FBOP in DOJ-FBOP Program Statement 5800-16.

The prison authorities at Leavenworth USP have issued no Forms BP-A0328, required in case of refusal and return of mail. Why? Because they know that Defendant is right and has a complete right to the delivery of his legal mail. They have not identified or offered any administrative remedies to Defendant, or for that matter to Oscar Stilley. Their actions amount to lawlessness and governmental corruption, insufficient to trigger any duty to exhaust administrative remedies. Defendant has exhausted all administrative remedies "available" within the meaning of the law. *Ross v. Blake*, 136 S. Ct. 1850 (2016).

The issues litigated herein have repeatedly been decided in favor of the inmate. That's the point of DOJ-FBOP Program Statement 5800-16, which is readily available online, from official sources. Legal mail must be delivered.

Defendant contends that he was cheated out of a petition for rehearing, and that he should at least get the extra time allowed. The one year statute of limitations for 2255 motions doesn't start until after the decision on a motion for rehearing/rehearing en banc, and after the 90 days for petition for certiorari whether or not such a petition is filed.

There is no need to consider or litigate that issue. Regardless of the facts and circumstances of the failed petition for rehearing, the statute of limitations has not commenced, due to the DOJ's contumacious defiance of their own rules concerning the delivery of legal mail packages.

Assuming arguendo that some administrative remedy is theoretically "available" within the meaning of the law, it would be utterly illusory and thus not actually "available." It would be impossible to pursue the standard BP8 informal resolution, BP9 to the Warden, BP10 to Regional Office, and BP11 to Central Office of the DOJ-FBOP before the expiration of the 2255 statute of limitations calculated from the date of the expiration of time to petition for certiorari to the US Supreme Court. The DOJ-FBOP routinely "runs the clock," and does its best to crush the litigating capacity of its prisoners.

The government indicts its own fraudulent case against the Defendant. If they thought Defendant "has nothing coming" why would they commit such crimes and lawlessness, to protect their judgment and extreme sentence?

They've already told the American public that they are an honorable organization run by honorable people. They claim to wear the white hat. They claim to do justice while their adversaries do wrong. They claim that they don't cheat the poor and downtrodden out of their rights.

Who persuaded Congress to impose the 1-year statute of limitations for 2255 motions? The DOJ. Who persuaded Congress to approve the minefield of obstacles to success on a 2255? The DOJ. Who stomps out the rights and litigation capabilities of inmates during that crucial first year? The DOJ.

Assuming arguendo that this Court, after a full briefing, disagrees with the Defendant and requires Defendant to exhaust administrative remedies, what happens then?

Defendant is formally requesting that his statute of limitations for the 2255 not start until his adversary the DOJ, by and through its agency the DOJ-FBOP, cease from its invidious interference with the mails, and with the right to obtain and possess the materials indispensable to a competent 2255 petition.

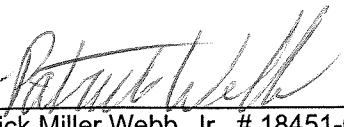
What does the government lose by having a formal decision of a court that says that the statute of limitations doesn't start to run until the DOJ-FBOP allows the delivery of legal mail? Nothing to which it had any arguable legal right. They would lose their corrupt "pincer attack," in which they stomp out litigating capacity while declaring that the statute of limitations continues to run.

What does Defendant lose by the lack of such a determination? It could easily be the remainder of Defendant's natural life. There is no guarantee that Defendant will survive nearly 32 years of harsh, arbitrary, and cruel confinement. The government claims to have rules, to respect the rights of inmates, etc. However, by its behavior as is shown herein, nothing that they say can be taken at face value. They shamelessly lie, cheat, and dissemble when it matters most.

CONCLUSION

This Court should order the DOJ-FBOP to reliably honor its own rules, and allow inmates to receive, possess, and effectively use all legal materials in or associated with their criminal case or any civil case affecting their rights. The Court should furthermore declare that Defendant's statute of limitations, for 2255 purposes, does not begin to run until that is reliably the case with respect to legal materials sent to inmates in federal prisons.

Respectfully submitted.

By: 
Patrick Miller Webb, Jr., # 18451-029
USP Leavenworth
U.S. Penitentiary
P.O. Box 1000

May 7, 2024
Date

RECEIVED

MAY 17 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

Leavenworth, KS 66048

CERTIFICATE OF SERVICE

Defendant Webb hereby certifies that on the date stated above he caused this to be filed electronically with the Clerk of the Court by using the CM/ECF system, thereby serving all persons having ECF privileges and entitled to service in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DUBUQUE

UNITED STATES OF AMERICA PLAINTIFF

v.

Case No. 2:20-cr-01018-CJW-MAR-1

PATRICK MILLER WEBB, JR DEFENDANT

RECEIVED

MAY 17 2024

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA

DEFENDANT'S MOTION TO COMPEL THE GOVERNMENT TO CEASE INTERFERING WITH THE US MAILS FOR THE PURPOSE OF WRECKING HIS RIGHT TO PEACEFUL PETITION, AND FOR DECLARATION THAT THE TIME UNDER 2255 HAS NOT BEGUN TO RUN, ETC., WITH INCLUDED BRIEF

Comes now Defendant Patrick Miller Webb, Jr., (Defendant) and for his verified motion states:

1. Defendant was convicted in the captioned case, whereupon he unsuccessfully appealed.
2. The 8th Circuit affirmed the appeal, 8th Circuit 21-3830, on 6-12-2023.
3. Defendant asked for and received an extension of time to file a petition for rehearing/rehearing en banc. The new deadline was 7-31-2023.
4. Defendant was unable to file the petition for rehearing because the Department of Justice-Federal Bureau of Prisons (DOJ-FBOP) kept him from getting the paperwork, consulting his attorney, etc., until it was too late.
5. Defendant unsuccessfully requested from the 8th Circuit an order compelling his counsel to turn the case file over to Defendant. The 8th Circuit order denying that request was entered 2-7-2024.
6. Defendant retained the services of an administrative assistant, namely Oscar Stilley (Stilley) to get his docket, docket items, transcripts, etc., produced, printed, and sent to him at Leavenworth USP, his place of confinement.
7. Stilley prepared and on 3-6-2024 sent Defendant a 9-pound package of legal materials necessary and proper for the preparation of Defendant's petition under 28 USC 2255 (2255). Although the package was actually delivered to the personnel of Leavenworth USP, it was returned to Stilley by prison personnel after excessive delay.
8. Stilley on April 15, 2024 sent the Executive Assistant to Crystal Carter, Warden of Leavenworth USP, an email explaining what happened and why it was flagrantly illegal and improper. Exhibit "1." All exhibits to this motion are incorporated herein as if set forth word for word.
9. Warden Carter and her Executive Assistant ignored this email, failing to even acknowledge receipt.
10. Stilley on April 23, 2024 sent a letter as an attachment to the Warden's Executive Assistant. Exhibit "2." Once again, there was no response at all.
11. Stilley on April 26, 2024 sent the package again, this time adding two books of a legal nature.
12. Stilley on the outside of the package added a message containing his phone and email, various quotations from US DOJ-FBOP Program Statement 5800-16. This was clearly printed on a standard 8.5" X 5.5" (half a letter size page) adhesive label, the same kind of label used to print the postage label on PirateShip. Exhibit "3."
13. That second package was delivered by the US Post Office to prison personnel on April 30, 2024.
14. Prison personnel still haven't delivered this material or sent the appropriate form to either Stilley or Defendant, setting forth any reasons for failure to deliver.
15. Defendant has been on extended lockdowns, which make it basically impossible to do any meaningful work.
16. Stilley in his cover email with Exhibit "2" explained that Defendant is in a housing unit that gets excessive lockdowns, asking for him to be moved to a unit with few lockdowns. This request was ignored. The text of the request was as follows:

BTW, Mr. Webb tells me about two issues that adversely affect his ability to exercise his 1st Amendment right to peaceful petition. First, he's in a unit that gets more lockdowns than other units. That's a terrible headwind for an inmate with legal pleadings to prepare, especially those with the significance of a 2255 motion. Would you be so kind as to instruct your personnel to place him in a housing unit with a low likelihood of lockdown, at least while he's busy with time sensitive legal work?

Second, he informs me that there appear to be plans to force inmates to associate with each other in ways they would not do on their own. If so this would be contrary to the good order and security of the institution. If violence breaks out between members of disparate groups, that could be assigned as a separate reason to lock the inmates down, thus wrecking their ability

to prepare and file pleadings, etc. Would you be so kind as to provide assurances that the inmates will be able to continue to avoid unhealthy associations which might lead to violence and disorder? I would hope that you'd actually encourage inmates to avoid situations that might trigger interpersonal conflict.

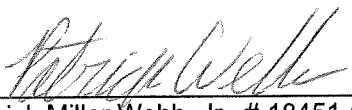
17. Defendant received no response whatsoever, to the foregoing email message, from any DOJ-FBOP personnel.
18. Without the material that Stilley is attempting to deliver to Defendant, it is as a practical matter impossible for Defendant to prepare a competent motion pursuant to 28 USC 2255.
19. Defendant has exhausted all administrative remedies "available" to him, within the meaning of applicable law.
20. Defendant is prevented from preparing and filing a competent 2255 motion due to governmental action.
21. Said governmental action is in violation of the constitution and laws of the United States, including but not limited to provisions concerning peaceful petition, due process, etc.
22. The best lawyer on planet earth could not prepare a competent motion under 28 USC 2255 without, at minimum, the docket, docket items, transcripts, and other written materials related to the case, such as discovery and disclosures by the government.
23. This motion is supported by an included brief in support.

WHEREFORE, Defendant respectfully requests that the Court compel the government to cease and desist from the interference with the US Mails, as is described herein; declare that Defendant's limitation period for a 2255 shall not commence until this impediment is removed and confirmed in writing by the Plaintiff or any of its entities or sub-entities; and for such other and further relief as may be appropriate whether or not specifically requested.

VERIFICATION

Patrick Miller Webb, Jr., by his signature below pursuant to 28 USC 1746 declares under penalty of perjury that the foregoing facts are true and correct.

Respectfully submitted.

By: 
Patrick Miller Webb, Jr., # 18451-029
USP Leavenworth
U.S. Penitentiary
P.O. Box 1000
Leavenworth, KS 66048

May 7, 2024
Date

Legal mail

Clerk of Court
United States Courthouse
1001 7th St SE
Cedar Rapids IA 52401

THE UNIVERSITY OF CHICAGO

XRAYED US MARSHALS SERVICE



KANSAS CITY 640
13 MAY 2024 PM 4 L

5-13

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104